

STATE OF MICHIGAN
IN THE
SUPREME COURT

ON APPEAL FROM THE MICHIGAN COURT OF APPEALS
SHAPIRO, P.J., AND MARKEY, METER, BECKERING, STEPHENS, M.J. KELLY, AND RIORDAN, JJ.

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

-vs-

KENYA ALI HYATT,

Defendant-Appellee.

Supreme Court
No. 153081

Court of Appeals
No. 325741

Circuit Court
No. 13-032654-FC

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PLAINTIFF-APPELLANT'S SECOND SUPPLEMENTAL AUTHORITY

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Pursuant to MCR 7.312(I), the People submit the following supplemental authority in relation to the arguments raised on appeal. On July 31, 2017, this Court issued *People v Lewis*, ___ Mich ___; ___ NW2d ___ (2017) (Docket No. 154396), holding that deprivation of defense counsel at a preliminary examination is subject to harmless-error review. The facts of *Lewis* are inconsequential to the issues presented in the present case. Instead, the rationale this Court used to reach its conclusion is of great significance and goes directly to the heart of the issue in this case: Whether courts must adhere to the dicta in *Miller v Alabama*, 567 US 460, 479; 132 S Ct 2455; 183 L Ed 2d 407 (2012): “[G]iven all we have said . . . we think appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon.”

In *Lewis*, this Court said, “Where the Supreme Court’s holding and its dicta conflict, we are bound to follow its holding.” ___ Mich at ___; slip op at 2; see also *id.* at ___; slip op at 6. This Court reasoned that in *United States v Cronin*, 466 US 648, 659; 104 S Ct 2039; 80 L Ed 2d 657 (1984), the only issue before the Court was whether “counsel had provided effective assistance at trial,” “so the Court’s statements about the complete denial of counsel were dicta.” *Lewis*, ___ Mich at ___; slip op at 6–7. Accordingly, this Court followed the direct holding of an earlier case, *Coleman v Alabama*, 399 US 1; 90 S Ct 1999; 26 L Ed 2d 387 (1970) (denial of counsel at a preliminary examination was subject to harmless-error review).

The only issue presented and argued in *Miller* was whether the Eighth Amendment barred mandatory life without parole for a juvenile murderer, *not* at what rate a life-without-parole sentence may be imposed after an individualized hearing. *Miller* directly held “the Eighth Amendment forbids a sentencing scheme that mandates life imprisonment without possibility of parole for juvenile offenders” and, thus, required individualized sentencing. 567 US at 479. *Miller*’s dicta therefore conflicts with its holding. The dicta enticingly *suggests a globalized* sentencing analysis, but the holding *requires an individualized* analysis. Thus, employing the rationale of *Lewis*, this Court must follow the holding of *Miller*, not the dicta, and reverse the Court of Appeals’ erroneous heightened standard of review premised on the dicta.

Respectfully Submitted,

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